

Circular Ref: 2017/0004

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ARRIVED SHIP - Has the law changed?

In recent case of 31 January, 2017, *Navalmar UK Ltd v Kale Maden Hammaddeler Sanayi ve Ticaret AS (The "Arundel Castle")* – QBD (Comm Ct) (Knowles J) [2017] EWHC 116 (Comm), the Owners had lost an appeal from the arbitration award in relation to the issue of ‘*arrived ship*’.

In this case, the vessel proceeded to the loading port, Krishnapatnam. The port was congested, and the vessel was unable to proceed straight to berth. She anchored at a location directed by the Port Authority. The owners gave a Notice of Readiness. A demurrage claim followed. The lawyers acting for the Owners did not provide lots of materials about the port to the arbitrators.

The relevant clauses from the relevant charterparty are as follows:

Clause 15 of the fixture recap

[Notice of readiness] to be tendered ... on vessels arrival at load/disch ports within port limits. The [notice of readiness] not to be tendered before commencement of laydays.

Clause 35 of the fixture recap provided:

Otherwise Gencon 94 printed form charter-party with logical amendments on [basis] the terms as per fixture recap.”

Clause 6(c) of Gencon 94 provided:

If the loading/discharging berth is not available on the Vessel’s arrival at or off the port of loading/discharging, the Vessel shall be entitled to give notice of readiness within ordinary office hours on arrival there ...

The arbitrators held that the Notice of Readiness given when the vessel was outside “port limits” was invalid. They identified “port limits” by reference to the relevant Admiralty chart. It was common ground that the vessel anchored outside the “port limits” shown on that chart.

Since the issue of fact was decided by the arbitrators, the appeal judge did not change the fact. However, the law remains the same as was decided by Lord Reid in *The Johanna Oldendorff* [1973] 2 Lloyd’s Rep 285, page 291 col 2 as follows:

I think that it ought to be made clear that the essential factor is that before a ship can be treated as an arrived ship she must be within the port and at the immediate and effective disposition of the charterer and that her geographical position is of secondary importance. But for practical purposes it is so much easier to establish that, if the ship is at a usual waiting place within the port, it can generally be presumed that she is there fully at the charterer’s disposal [emphasis added].

FDD department of Andrew Liu based in Shanghai advice is as follows:

- a) Lawyers need to be backed by technical people in such cases. This case should have been won easily by the lawyers of the Owners, but they lost the case for them by not providing enough information to the arbitrators. Therefore, a selection of a lawyer, even when the Club is appointing for you is important. It's your money, and you still have some elements of legal costs like deductible that needs to be paid by you. You can ask the Club to appoint a particular lawyer.
- b) Andrew Liu's FDD department is also manned by a Master Mariner and have assisted the clients by giving crucial technical points.

Source of Information: Andrew Liu & Co., Ltd www.andrewliu.com.hk